

Message Text

LIMITED OFFICIAL USE

PAGE 01 GENEVA 04184 271545Z

ACTION EB-07

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 SSO-00 NSCE-00

USIE-00 INRE-00 STRE-00 AGRE-00 CEA-01 CIAE-00

COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05 L-03

LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05 SS-15

STR-04 ITC-01 TRSE-00 PRS-01 SP-02 FEAE-00 OMB-01

XMB-02 OPIC-03 /106 W

-----271548Z 083598 /43

O R 271455Z MAY 77

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 7727

INFO AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY TOKYO

USMISSION EC BRUSSELS

USMISSION OECD PARIS

LIMITED OFFICIAL USE GENEVA 4184

PASS STR ELECTRONICALLY

PASS TREASURY

FOR EB/ITP

E.O. 11652: N/A

TAGS: GATT, ETRD

SUBJECT: GATT WORKING PARTY ON ZENITH

1. IN PREPARATION FOR WORKING PARTY ON ZENITH, AND IN RESPONSE TO QUESTIONS FROM THE EC AND JAPAN, THE GATT SECRETARIAT HAS BEEN RESEARCHING GATT ASPECTS OF THE ZENITH CASE AS IT RELATES TO (1) SUSPENSION OF LIQUIDATION AND THE POSTING OF BONDS, AND (2) THE RELEVANCE OF THE GRANDFATHER CLAUSE. IN INFORMAL DISCUSSION, SECRETARIAT OUTLINED ITS WON THINKING AS FOLLOWS.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 GENEVA 04184 271545Z

2. SUSPENSION OF LIQUIDATION AND POSTING OF BOND -- GATT PRECEDENTS ON THIS QUESTION ARE MEAGER. THE SECRETARIAT COULD FIND NO GATT DISCUSSION OF SUSPENSION OF LIQUIDATION, ALTHOUGH AN INTERPRETATIVE NOTE TO ARTICLE VI SAYS THAT "A CONTRACTING PARTY MAY REQUIRE REASONABLE SECURITY (BOND OR CASE DEPOSIT) FOR THE PAYMENT OF ANTIDUMPING OR COUNTERVAILING DUTY PENDING

FINAL DETERMINATION OF THE FACTS IN ANY CASE OF SUSPECTED DUMPING OR SUBSIDIZATION." SECRETARIAT ADDED THAT LACK OF DETAIL IN THIS NOTE LED TO FURTHER ELABORATION IN ARTICLE 10 OF ANTIDUMPING CODE WITH RESPECT TO "PROVISIONAL MEASURES," THUS, IN SECRETARIAT ANALYSIS, ACT OF WITHHOLDING LIQUIDATION IS NOT PER SE INCONSISTENT OR A VIOLATION OF GATT ALTHOUGH IT COULD BE ARGUED THAT, IF PRIMARY ACTION (I.E. LEVYING OF COUNTERVAILING DUTY) IS INCONSISTENT, THEN PROVISIONAL ACTION (SUSPENSION OF LIQUIDATION, POSTING A BOND) IN THAT PARTICULAR INSTANCE IS ALSO INCONSISTENT.

3. GRANDFATHER CLAUSE -- SECRETARIAT BELIEVES THAT U.S. LAW IN QUESTION (19 USC 1303) IS COVERED UNDER THE GRANDFATHER CLAUSE OF THE PROTOCOL OF PROVISIONAL APPLICATION, SINCE IT WAS IN FORCE AT THE TIME OF THE PROTOCOL (1947). IN 1955 REVIEW SESSION, SEVERAL PROPOSALS WERE MADE IN AN ATTEMPT TO OBTAIN DEFINITIVE ACCEPTANCE OF GATT UNDER ARTICLE XXVI AND ONE PROPOSAL BY UK (L/299) RESULTED IN NOTIFICATION TO GATT BY SEVERAL CP'S OF LEGISLATION COVERED BY THE GRANDFATHER CLAUSE. (UKAWA OF JAPANESE MISSION HAS ASKED US IF WE "RESERVED" OR NOTIFIED OUR 1938 LAW RELATING TO SUSPENSION OF LIQUIDATION AND HAS OPINED THAT THE U.S. NOTIFICATION OF OUR COUNTERVAILING DUTY LEGISLATION AT TIME OF REVIEW SESSION INDICATED THAT OUR "RESERVATION" APPLIED ONLY TO THE LACK OF INJURY PROVISION IN THE LAW.) U.S. NOTIFICATION READS (GATT L/2375/ADD.1) "SECTION 303 OF THE TARIFF ACT OF 1930 REQUIRES THE ASSESSMENT OF COUNTERVAILING DUTIES TO LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 GENEVA 04184 271545Z

OFFSET A SUBSIDY OR OTHER GRANT WITHOUT A SHOWING OF INJURY OR THREAT OF INJURY TO DOMESTIC INDUSTRY." SECRETARIAT SAYS THAT THESE NOTIFICATIONS WERE NOT MEANT TO BE EXHAUSTIVE AND THEREFORE DID NOT EXCLUDE THE CP'S FROM INCLUDING OTHER RELEVANT LEGISLATION UNDER THE GRANDFATHER CLAUSE. THIS WAS MADE CLEAR, BOTH IN THE ORIGINAL PROPOSAL BY THE UK AND BY THE U.S. NOTIFICATION WHICH LISTS A "SUMMARY OF MORE IMPORTANT LEGISLATIVE PROVISIONS."

4. TERMS OF REFERENCE OF WP -- THE SECRETARIAT BELIEVES THAT IT CAN BE ARGUED THAT THE COURT'S INTERPRETATION IN THE ZENITH CASE, IF UPHELD, IS INCONSISTENT WITH GATT ARTICLES VI AND XVI. HOWEVER, IT COULD NOT BE HELD, IN VIEW OF THE APPLICABILITY OF THE GRANDFATHER CLAUSE, THAT IT IS IN VIOLATION OF THESE GATT ARTICLES. THE SECRETARIAT BELIEVES A MUCH BETTER ARGUMENT CAN BE MADE FOR NULLIFICATION AND IMPAIRMENT (SHOULD THE COURT'S DECISION BE UPHELD) UNDER ARTICLE XXIII ON THE GROUNDS

THAT ALL AFFECTED CONCESSIONS NEGOTIATED WITH THE U.S.
UNDER THE GATT HAD BEEN UNDERTAKEN ON THE BASIS THAT
COUNTERVAILING DUTIES WOULD NOT BE ASSESSED FOR THE RE-
BATE OF INDIRECT TAXES. THE EC'S ATTEMPT IN THE GATT
COUNCIL TO WIDEN THE TERMS OF REFERENCE OF THE WORKING
PARTY AND THEIR INQUIRIES OF THE SECRETARIAT INDICATE
THAT THEY MAY BE FOLLOWING THIS LINE OF REASONING, AL-
THOUGH WE DO NOT KNOW TO WHAT EXTENT THEY MAY ARGUE THIS
CASE IN THE WORKING PARTY. SORENSON

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MEETING AGENDA, LITIGATION, COMMITTEE MEETINGS, LIQUIDITY (MONETARY), BUSINESS FIRMS, BANKRUPTCIES, TELEVISION EQUIPMENT
Control Number: n/a
Copy: SINGLE
Sent Date: 27-May-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977GENEVA04184
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: UPGRADED PER MEMO FROM EA - EVELYN CORBERT 9/5/79
Executive Order: R1 19970527
Errors: N/A
Expiration:
Film Number: D770190-0367
Format: TEL
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770511/aaaaaivn.tel
Line Count: 125
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 739b6088-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 02-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2341896
Secure: OPEN
Status: NATIVE
Subject: GATT WORKING PARTY ON ZENITH
TAGS: ETRD, JA, US, GATT, ZENITH
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/739b6088-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009